

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DEREK D. SARTIN

VS.

ALVIN R. LUNA AND LUNA TRUCKING, LLC

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendants ALVIN R. LUNA AND LUNA TRUCKING, LLC ("Defendant") file this Notice of Removal of the above-styled action pursuant to 28 U.S.C. § 1446(a) and would respectfully represent and show unto this Court the following:

A. INTRODUCTION

1. On or about August 17, 2016, DEREK D. SARTIN ("Plaintiff") initiated the state court lawsuit against ALVIN R. LUNA and LUNA TRUCKING, LLC, ("Defendants") in the District Court of Bowie County, Texas, styled *Derek D. Sartin v. Alvin R. Luna and Luna Trucking, LLC*, pending as Cause No. 16C1197-102 ("the state court action"). In the state court action, Plaintiff seeks damages for injuries he contends he received in a motor vehicle accident with Defendant. *See Plaintiff's Original Petition*, attached hereto as Exhibit "A." Plaintiff contends that on September 10, 2015, he was driving on Highway 67 in Bowie County, Texas when Defendant Alvin R. Luna entered into the intersection of County Road 41289 and Highway 67, veering into the path of Plaintiff and causing a vehicle collision. Plaintiff contends that the accident in question was caused by the negligence of Alvin R. Luna, in the performance of his employment with Luna Trucking, LLC. Plaintiff contends that such negligent actions on the part of Defendants caused personal injuries to himself and to his vehicle in an amount over \$200,000 but not more than \$1,000,000.

3. Plaintiff contends that he has sustained injuries to his chest, right arm, spine, and head and has incurred legal damages for the following elements:

- a. physical pain and anguish sustained in the past;

- b. physical pain and mental anguish that, in reasonable probability, he will sustain in the future;
- c. Loss of earning capacity sustained in the past;
- d. loss of earning that, in reasonable probability, he will sustain in the future;
- e. physical impairment sustained in the past;
- f. physical impairment that, in reasonable probability, he will sustain in the future;
- g. medical expenses incurred in the past; and
- h. medical expenses that, in reasonable probability, he will sustain in the future.

4. Plaintiff pleads that Defendant Alvin R. Luna is responsible for his negligence and that Defendant Luna Trucking, LLC is responsible for such damages under the doctrine of respondeat superior as Defendant Alvin R. Luna was operating the truck in the course and scope of his employment with Luna Trucking, LLC.

5. Plaintiff pleads that Defendants' actions have caused him damages in an amount of not less than \$200,000.

6. The attorneys involved in the action being removed are listed as follows:

PARTY AND PARTY TYPE

Derek D. Sartin - Plaintiff

Attorney(s)

Gary D. Grimes - 08495500
Law Offices of Gary D. Grimes
8 Woodmont Crossing
Texarkana, Texas 75503
(903) 792-1713 Telephone
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Alvin R. Luna - Defendant
Luna Trucking, LLC- Defendant

Jerry L. Ewing - 06755470
Jonathan L. Davenport - 24012502
Walters, Balido & Crain, LLP
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7. The name and address of the court from which the case is being removed is as follows:

The Honorable Judge Bobby Lockhart
102nd Judicial District Court of Bowie County, Texas
Bi-State Justice Bldg
100 N State Line, Box 10
Texarkana, TX 75501
Phone: 903-798-3527

B. NOTICE OF REMOVAL TIMELY

8. Accordingly, pursuant to 28 U.S.C. § 1446(b)(1), this Notice of Removal is filed within thirty (30) days after Defendant received the initial pleading or summons. Consequently, this Notice of Removal is timely.

C. COMPLETE DIVERSITY

9. This case may be removed because there is complete diversity among the parties and the case involves an amount in controversy in excess of \$75,000.00. See 28 U.S.C. § 1332(a).

Plaintiff is a resident of the State of Texas. Defendants are residents of the State of Oklahoma. Defendant Alvin Luna is an individual resident of the State of Oklahoma living in Valliant, Oklahoma. Defendant Luna Trucking LLC is an Oklahoma limited liability company whose principal place of business is in Valliant, Oklahoma.

D. ALL PLEADINGS OF STATE COURT ACTION ATTACHED AS EXHIBITS

11. Copies of all pleadings, process, orders, and other filings in the state court action are attached to this notice as required by 28 U.S.C. § 1446(a). See *Exhibit "B"*.

E. BASIS FOR REMOVAL

12. Because this is a civil action of which the District Courts of the United States have original jurisdiction, this case may be removed by this Court pursuant to 28 U.S.C. § 1446(b). Further, Plaintiff is a resident of the State of Texas and Defendants are residents of Valliant, Oklahoma. Luna Trucking LLC is an Oklahoma limited liability company with its registered agent and office in Kansas being Alvin R. Luna, 3334 Wheeler Road, Valliant, Oklahoma 74764. Plaintiff's Original Petition seeks damages in excess of \$200,000.00. See

Exhibit "A" attached. Therefore, the Court has subject matter jurisdiction based on diversity of residency. 28 U.S.C. § 1132. As such, this removal action is proper.

F. VENUE

13. Venue is proper in this District under 28 U.S.C. §1441(a) because this District and division embrace the place where the removed action has been pending.

G. FILING OF NOTICE WITH STATE COURT

14. Promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through their attorney of record and to the clerk of the state court.

PRAYER

15. **WHEREFORE, PREMISES CONSIDERED,** Defendants ALVIN R. LUNA and LUNA TRUCKING, LLC, request that this Court proceed with the handling of this cause as if it had been originally filed herein, that this Court make such orders, if any, and take such action, if any, as may be necessary in connection with the removal of the state court action to this Court, and that they have such other and further relief to which they may show themselves entitled.

Respectfully submitted,

WALTERS, BALIDO & CRAIN, L.L.P.

By: /s/ Jerry L. Ewing
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CERTIFICATE OF SERVICE

This is to certify that on the 19th day of September, 2016, a true and correct copy of the above and foregoing was forwarded to all counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Jerry L. Ewing
JERRY L. EWING